

HISTORICAL AND REVISION NOTES
1956 ACT

| <i>Revised section</i> | <i>Source (U.S. Code)</i> | <i>Source (Statutes at Large)</i> |
|------------------------|---|---|
| 323(a) | 32:154 (last 26 words of last par.) | June 3, 1916, ch. 134, § 76 (1st sentence, and 1st 24 words of 2d sentence); restated June 15, 1933, ch. 87, § 13 (1st sentence, and 1st 24 words of 2d sentence), 48 Stat. 159. |
| 323(b) | 32:115 (1st sentence, and 1st 24 words of 2d sentence). | June 3, 1916, ch. 134, § 110 (last 25 words of last par.); restated Sept. 22, 1922, ch. 423, § 6 (last 137 words of last par.); restated May 12, 1928, ch. 529 (last 25 words), 45 Stat. 501. |
| 323(c) | 50:1116 (last 15 words of 1st sentence). | July 9, 1952, ch. 608, § 706 (last 15 words of 1st sentence), 66 Stat. 503. |

In subsection (a) the words “ceases to have the qualifications prescribed under section 300 of this title” are substituted for 32:154 (last 26 words of last par.), since it is implicit that a member who could not be paid would lose his federally recognized status (see JAGA 1953/9033, 3 Dec. 1953). The last 23 words of subsection (a) are inserted as a necessary implication of the rule stated in section 309(c) of this title.

In subsection (b), the words “or warrant officer” are omitted, since section 101(9) of this title defines “officer” to include warrant officers. The word “detailed” is substituted for the word “appointed”, since the filling of the positions involved is not appointment to an office in the constitutional sense. The word “commissioned” is inserted after the words “composed of”, since the word “officer” alone, in 32:115, referred to a commissioned officer only (see opinion of the Judge Advocate General of the Army (JAGA 1953/4078, 6 May 1953)). The words “who outrank him” are substituted for the words “senior in rank to the officer under investigation”.

In subsection (c), the opening clause is substituted for the words “such transfer”. The words “his Federal recognition is withdrawn” are substituted for the words “shall terminate his federally recognized National Guard or Air National Guard status”.

1958 ACT

| <i>Section of title 32</i> | <i>Source (U.S. Code)</i> | <i>Source (Statutes at Large)</i> |
|----------------------------|---|---|
| 323(d) | 50:1261 (as applicable to Federal recognition). | Sept. 3, 1954, ch. 1257, § 324 (as applicable to Federal recognition), 522(e)(1) (56th through 63d words), 68 Stat. 1161, 1181. |
| 323(e) | 50:1352(e)(1) (56th through 63d words). 50:1352(e)(2) (78th through 85th words). | |

The change [in subsec. (b)(1) and (2)] is necessary to exclude from the efficiency board commissioned officers of the Army Reserve or Air Force Reserve, in accordance with the source law, the first sentence of section 76 of the Act of June 3, 1916, chapter 134 (formerly 32 U.S.C. 115 (1st sentence)).

In subsection (d), the words “notwithstanding section 115 of title 32” are omitted as surplusage.

In subsection (e), the words “if appropriate” are omitted as surplusage.

AMENDMENTS

1994—Subsec. (c). Pub. L. 103-337, § 1676(a)(3), substituted “12105, 12213(a), or 12214(a)” for “3259, 3352(a), 8259, or 8352(a)”.

Subsecs. (d), (e). Pub. L. 103-337, § 1630(2), added subsec. (d) and struck out former subsecs. (d) and (e) which read as follows:

“(d) Except as provided in sections 1005 and 1006 of title 10, the Federal recognition of a second lieutenant of the Army National Guard who is discharged under section 3820(c) of title 10 for failure of promotion shall be withdrawn on the date of that discharge.

“(e) Except as provided in sections 1005 and 1006 of title 10, the Federal recognition of a reserve officer of the Air Force who is not recommended for promotion under section 8368(c)(1) or (2) of title 10, or who is found to be not qualified for Federal recognition under section 8368(d) or (e) of title 10, shall be withdrawn.”

1958—Subsec. (b)(1). Pub. L. 85-861, § 33(c)(2), substituted “the Regular Army or the Army National Guard of the United States, or both” for “a regular or reserve component of the Army”.

Subsec. (b)(2). Pub. L. 85-861, § 33(c)(2), substituted “the Regular Air Force or the Air National Guard of the United States, or both” for “a regular or reserve component of the Air Force”.

Subsecs. (d), (e). Pub. L. 85-861, § 2(11), added subsecs. (d) and (e).

EFFECTIVE DATE OF 1994 AMENDMENT

Amendment by section 1676(a)(3) of Pub. L. 103-337 effective Dec. 1, 1994, except as otherwise provided, and amendment by section 1630(2) of Pub. L. 103-337 effective Oct. 1, 1996, see section 1691 of Pub. L. 103-337, set out as an Effective Date note under section 10001 of Title 10, Armed Forces.

EFFECTIVE DATE OF 1958 AMENDMENT

Amendment by section 33(c)(2) of Pub. L. 85-861 effective Aug. 10, 1956, see section 33(g) of Pub. L. 85-861, set out as a note under section 101 of Title 10, Armed Forces.

SUSPENSION OF SUBSECTION (d) OF THIS SECTION

For authority of the President to suspend subsec. (d) of this section in time of war or emergency declared by Congress, see section 111 of this title.

§ 324. Discharge of officers; termination of appointment

(a) An officer of the National Guard shall be discharged when—

- (1) he becomes 64 years of age; or
- (2) his Federal recognition is withdrawn.

The official who would be authorized to appoint him shall give him a discharge certificate.

(b) Subject to subsection (a), the appointment of an officer of the National Guard may be terminated or vacated as provided by the laws of the State of whose National Guard he is a member, or by the laws of the Commonwealth of Puerto Rico, or the District of Columbia, Guam, or the Virgin Islands, whose¹ National Guard he is a member.

(Aug. 10, 1956, ch. 1041, 70A Stat. 607; Pub. L. 100-456, div. A, title XII, § 1234(b)(6), Sept. 29, 1988, 102 Stat. 2059; Pub. L. 109-163, div. A, title X, § 1057(b)(5), Jan. 6, 2006, 119 Stat. 3441.)

HISTORICAL AND REVISION NOTES

| <i>Revised section</i> | <i>Source (U.S. Code)</i> | <i>Source (Statutes at Large)</i> |
|------------------------|-----------------------------|--|
| 324(a) | 32:114 (less 1st sentence). | June 3, 1916, ch. 134, § 77; restated June 15, 1933, ch. 87, § 14; restated June 19, 1935, ch. 277, § 4, 49 Stat. 391; July 9, 1952, ch. 608, § 803 (11th par.), 66 Stat. 505. |
| 324(b) | 32:114 (1st sentence). | |

In subsection (a), the words “shall be discharged” are substituted for the words “shall thereupon cease to be a member thereof” since an official is required to give the officer a discharge certificate. The words “becomes 64 years of age” are substituted for the words “upon

¹ So in original. Probably should be “of whose”.

reaching the age of sixty-four years". The words "his Federal recognition is withdrawn" are substituted for the words "When Federal recognition is withdrawn * * * as provided in section 115 of this title".

In subsection (b), the words "Subject to subsection (a)" are inserted for clarity. The words "as provided by the laws" are substituted for the words "in such manner as * * * shall provide by law".

AMENDMENTS

2006—Subsec. (b). Pub. L. 109-163, which directed substitution of "State of whose National Guard he is a member, or by the laws of the Commonwealth of Puerto Rico, or the District of Columbia, Guam, or the Virgin Islands, whose National Guard he is a member" for "State or Territory of whose National Guard he is a member, or by the laws of Puerto Rico, or the District of Columbia, if he is a member of its National Guard", was executed by making the substitution for language that did not have a comma after "Puerto Rico", to reflect the probable intent of Congress.

1988—Subsec. (b). Pub. L. 100-456 struck out ", the Canal Zone," after "Puerto Rico".

§ 325. Relief from National Guard duty when ordered to active duty

(a) RELIEF REQUIRED.—(1) Except as provided in paragraph (2), each member of the Army National Guard of the United States or the Air National Guard of the United States who is ordered to active duty is relieved from duty in the National Guard of his State, or of the Commonwealth of Puerto Rico, Guam, or the Virgin Islands or the District of Columbia, as the case may be, from the effective date of his order to active duty until he is relieved from that duty.

(2) An officer of the Army National Guard of the United States or the Air National Guard of the United States is not relieved from duty in the National Guard of his State, or of the Commonwealth of Puerto Rico, Guam, or the Virgin Islands or the District of Columbia, under paragraph (1) while serving on active duty in command of a National Guard unit if—

(A) the President authorizes such service in both duty statuses; and

(B) the Governor of his State, or of the Commonwealth of Puerto Rico, Guam, or the Virgin Islands, or the commanding general of the District of Columbia National Guard, as the case may be, consents to such service in both duty statuses.

(b) RETURN TO STATE STATUS.—So far as practicable, members, organizations, and units of the Army National Guard of the United States or the Air National Guard of the United States ordered to active duty shall be returned to their National Guard status upon relief from that duty.

(Aug. 10, 1956, ch. 1041, 70A Stat. 607; Pub. L. 100-456, div. A, title XII, §1234(b)(6), Sept. 29, 1988, 102 Stat. 2059; Pub. L. 108-136, div. A, title V, §516, Nov. 24, 2003, 117 Stat. 1461; Pub. L. 109-163, div. A, title X, §1057(b)(6), Jan. 6, 2006, 119 Stat. 3442.)

HISTORICAL AND REVISION NOTES

| Revised section | Source (U.S. Code) | Source (Statutes at Large) |
|-----------------|----------------------------------|---|
| 325(a) | 50:1120. | July 9, 1952, ch. 608, |
| 325(b) | 50:1122(b) (less last 17 words). | §§ 710, 712(b) (less last 17 words), 66 Stat. 503, 504. |

In subsection (a), the words "in the service of the United States" are omitted as surplusage. The words "effective date of his order to active duty until he is relieved from that duty" are substituted for the words "active-duty date of the orders and for as long as they remain on active duty in the service of the United States". 50:1120 (last sentence) is omitted as surplusage, since the persons involved are members of the Army or the Air Force.

In subsection (b), the words "upon relief from that duty" are substituted for the words "upon being relieved from active duty". The words "their National Guard status" are substituted for the words "to the National Guard and Air National Guard in their respective States, Territories, and the District of Columbia".

AMENDMENTS

2006—Subsec. (a). Pub. L. 109-163 substituted "State, or of the Commonwealth of Puerto Rico, Guam, or the Virgin Islands" for "State or Territory, or of Puerto Rico" in par. (1) and introductory provisions of par. (2) and "State or Territory or Puerto Rico" in par. (2)(B).

2003—Subsec. (a). Pub. L. 108-136, §516(a), substituted "(a) RELIEF REQUIRED.—(1) Except as provided in paragraph (2), each" for "(a) Each" and added par. (2).

Subsec. (b). Pub. L. 108-136, §516(b), inserted heading. 1988—Subsec. (a). Pub. L. 100-456 struck out ", the Canal Zone," after "Puerto Rico".

NATIONAL GUARD SUPPORT FOR 2004 DEMOCRATIC AND REPUBLICAN NATIONAL CONVENTIONS AND OTHER APPROPRIATE EVENTS

Memorandum of President of the United States, July 23, 2004, 69 F.R. 46397, provided:

Memorandum for the Secretary of Defense

By the authority vested in me as President by the Constitution and the laws of the United States, including section 301 of title 3, United States Code, I hereby delegate to you the functions and authority of the President contained in section 325 of title 32, United States Code, with respect to activities related to the 2004 Democratic and Republican National Conventions, and other appropriate events as you determine from time to time in consultation with the Assistant to the President for Homeland Security.

You are further authorized and directed to make necessary arrangements to fund this activity from the proper appropriations and to publish this memorandum in the Federal Register.

GEORGE W. BUSH.

§ 326. Courts-martial of National Guard not in Federal service: composition, jurisdiction, and procedures

In the National Guard not in Federal service, there are general, special, and summary courts-martial constituted like similar courts of the Army and the Air Force. They have the jurisdiction and powers, except as to punishments, and shall follow the forms and procedures, provided for those courts. Punishments shall be as provided by the laws of the respective States, the Commonwealth of Puerto Rico, the District of Columbia, Guam, and the Virgin Islands.

(Aug. 10, 1956, ch. 1041, 70A Stat. 608; Pub. L. 107-314, div. A, title V, §512(a), Dec. 2, 2002, 116 Stat. 2537; Pub. L. 109-163, div. A, title X, §1057(b)(7), Jan. 6, 2006, 119 Stat. 3442.)

HISTORICAL AND REVISION NOTES

| Revised section | Source (U.S. Code) | Source (Statutes at Large) |
|-----------------|--------------------|--|
| 326 | 32:91. | June 3, 1916, ch. 134, §102, 39 Stat. 208. |

The words "not in Federal service" are substituted for the words "Except in organizations in the service of